

State of South Dakota

EIGHTY-THIRD SESSION LEGISLATIVE ASSEMBLY, 2008

735P0205

HOUSE ENGROSSED NO. **SB 126** - 2/26/2008

Introduced by: Senators Olson (Ed), Dempster, Hanson (Gary), Heidepriem, Katus, Koetzle, McCracken, Nesselhuf, Schmidt (Dennis), Sutton, and Turbak Berry and Representatives Lust, Ahlers, Brunner, Cutler, Dreyer, Dykstra, Gilson, Gosch, Halverson, Howie, McLaughlin, Novstrup (David), Peters, Pitts, Rave, Tidemann, Wick, and Willadsen

1 FOR AN ACT ENTITLED, An Act to allow municipalities and counties to issue additional on-
2 sale alcoholic beverage licenses.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 35-4 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Notwithstanding the provisions of § 35-4-11 or 35-4-11.1 or the on-sale license fees
7 established pursuant to subdivisions 35-4-2(4) and (6), the governing board of any incorporated
8 municipality or the board of county commissioners of any county may, by ordinance, issue
9 additional on-sale licenses for full-service restaurants if the municipality or county charges at
10 least the minimum fee required by section 7 of this Act.

11 Section 2. Terms used in this Act mean:

12 (1) "Bar," any permanently installed counter within the restaurant area from which
13 alcoholic beverages are regularly served to customers by a person who is tending bar



1 or drawing or mixing alcoholic beverages;

2 (2) "Full-service restaurant," any restaurant at which a waiter or waitress delivers food

3 and drink offered from a printed food menu to patrons at tables, booths, or the bar.

4 Any restaurant that only serves fry orders or food and victuals such as sandwiches,

5 hamburgers, or salads is not a full-service restaurant;

6 (3) "Restaurant," any area in a building maintained, advertised, and held out to the public

7 as a place where individually priced meals are prepared and served primarily for

8 consumption in such area and where not more than forty percent of the gross revenue

9 of the restaurant is derived from the sale of alcohol or alcoholic beverages. The

10 restaurant shall have a dining room or rooms, a kitchen, and the number and kinds

11 of employees necessary for the preparing, cooking, and serving of meals.

12 Section 3. An applicant for a full-service restaurant on-sale license shall provide sufficient

13 documentation to the municipality to prove that the primary source of revenue from the

14 operation of the restaurant will be derived from the sale of prepared food and nonalcoholic

15 beverages and not from the sale of alcoholic beverages. The supporting documentation

16 concerning the primary source of revenue submitted pursuant to this section is confidential.

17 Section 4. When the municipality is renewing a full-service restaurant on-sale license, the

18 municipality shall condition the license renewal upon receiving documentation that not more

19 than forty percent of gross sales from the preceding twelve months operation of the full-service

20 restaurant is derived from the sale of alcohol or alcoholic beverages. The full-service restaurant

21 on-sale licensee shall submit an annual report to the municipality on the sales for the full-service

22 restaurant that includes an oath verifying the validity of the information provided in the report.

23 The report and the supporting documentation submitted pursuant to this section are confidential.

24 The report shall contain the annual gross sales of the licensee for the following two categories:

(1) Food and nonalcoholic beverage sales; and

(2) Alcoholic beverage sales.

Section 5. A full-service restaurant on-sale licensee may only serve alcoholic beverages for on-premise consumption in the bar and dining room area of the restaurant.

Section 6. A restaurant that has a full-service restaurant on-sale license may only be advertised or held out to the public as primarily a food eating establishment. No licensee that has a full-service restaurant on-sale license may allow smoking on the licensed premises.

Section 7. That chapter 35-4 be amended by adding thereto a NEW SECTION to read as follows:

Any municipality or county adopting the ordinance pursuant to section 1 of this Act may issue additional on-sale licenses to full-service restaurants. Any municipality adopting such ordinance shall charge at least one dollar for each person residing within the municipality as measured by the last preceding decennial federal census. Any county adopting such ordinance shall charge at least one dollar for each person residing within the county but outside the boundary of any municipality as measured by the last preceding decennial federal census.

Each municipality or county shall set the on-sale license fee within ninety days of adopting the ordinance pursuant to section 1 of this Act or within thirty days after the resolution of any appeal pursuant to section 3 of this Act. After the fee for an on-sale license issued pursuant to this Act has been determined, no municipality or county may change the fee for a period of ten years unless a growth in population reported by the federal decennial census requires an increase in the fee.

Section 8. That chapter 35-4 be amended by adding thereto a NEW SECTION to read as follows:

Each licensee who owns an on-sale license issued pursuant to subdivision 35-4-2(4) or (6)

1 as of January 1, 2008, and who purchased the license or had the license transferred to such
2 licensee at any time between January 1, 2003, and January 1, 2008, shall report the amount
3 originally paid for the on-sale license to the municipality or county that issued the license. The
4 declared purchase price shall be made under oath and shall include the documents establishing
5 the amount paid for the on-sale license to the municipality or county that issued the license. If
6 the transaction for the purchase of the on-sale license included real or personal property, the full
7 market value of the real or personal property on the date of the original sale shall be deducted
8 from the total transaction price to determine the amount paid by the licensee for the on-sale
9 license. The burden of establishing the amount paid for the license shall be on the licensee. Any
10 licensee contesting the fair market value of the real and personal property may appeal the
11 valuation to circuit court.

12 Section 9. Any municipality or county adopting the ordinance pursuant to section 1 of this
13 Act shall set the price of a new full-service restaurant on-sale license, pursuant to section 7 of
14 this Act, at or above the current fair market value. However, such full-service restaurant on-sale
15 license fee may not be less than the minimum on-sale license fee established pursuant to
16 subdivision 35-4-2(4) or (6). For purposes of this section, the term, current fair market value,
17 means the documented price of the on-sale license most recently sold between January 1, 2003,
18 and January 1, 2008, through an arm's-length transaction, less the value of any real or personal
19 property included in the transaction. Each on-sale license holder as of January 1, 2008, who
20 acquired the on-sale license within the last five years shall report to the municipality or county
21 the date and price paid for its on-sale license.

22 Section 10. Each municipality or county adopting an ordinance pursuant to section 1 of this
23 Act shall maintain a registry of each on-sale license that is being offered for sale at the price
24 established in section 9 of this Act and furnish a copy of the registry to anyone who requests a

1 new full-service restaurant on-sale license. The municipality or county may only issue a new
2 license pursuant to this Act if no on-sale license is on the registry or a person desiring to
3 purchase an on-sale license listed on the registry provides documentation showing that the
4 person is unable to purchase the on-sale license at the price established in section 9 of this Act
5 and on terms satisfactory to both the potential buyer and seller. The price of any on-sale license
6 registered as, for sale, with the municipality or county shall be sold at the current fair market
7 price set by the municipality or county pursuant to section 9 of this Act. Nothing in this Act
8 precludes the sale of an on-sale license by a licensee not listed on the registry.

9 Section 11. The existing on-sale license holder is responsible for registering with the
10 municipality or county that the on-sale license is for sale pursuant to section 10 of this Act.